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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,590

05/12/2006

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032475-041

9862

50446 7590 11/12/2009
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EXAMINER

KRAUSE, ANDREW E

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/561,590	Applicant(s) TROPLIN ET AL.	
	Examiner ANDREW KRAUSE	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Listing of Claims

1. Claims 1, 3-14, 17-21 are pending. Claims 1, 3-9, and 14 are currently amended.

Claims 17-21 are new.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 3-14, 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday (US 7,340,990) in view of Fox (2,977,231), and Russoff 2,954,293.

4. Halliday discloses a concentrate for producing an instant chocolate beverage. The concentrate is a liquid chocolate ingredient in the form of a viscous liquid or gel. The liquid chocolate ingredient has a viscosity of 1700-3900 mPa and a solids content of 64-70% (col. 12, lines 60-65). Although Halliday does not explicitly disclose that cocoa powder is present in the liquid chocolate ingredient, it is well known in the art that liquid chocolate beverage preparations contain cocoa powder. For example, Fox discloses a chocolate beverage concentrate having a solids content of about 64%, a cocoa content of about 8% and a density of 1.31 (Example 2). The use of a cocoa powder containing syrup such as that disclosed by Fox as the 64-70% solids, chocolate flavoring composition in Halladay would have been obvious to one having ordinary skill in the

art at the time of the invention as the selection of a formulation known to be suitable for producing cocoa based beverages. One having ordinary skill in the art would find it obvious to adjust the viscosity for the intended purpose using known methods.

5. Halliday does not explicitly disclose the presence of a cocoa taste enhancer formed according to the claimed method. However, Russoff discloses a cocoa flavoring (col. 2, line 60-col. 3 line 4) produced by macerating cocoa material such as cocoa nibs in (the presence of water to form a solution (juice) (col. 3 lines 15-26, col. 4, lines 50), recovering the juice, and concentrating the juice to obtain a flavoring (col. 24-26), which may be used as a flavor enhancer. The recovered extract, having a fragrant chocolate aroma and flavor may be used as a flavorant for chocolate beverages (col. 9, lines 40-46). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the liquid chocolate concentrate of Halliday and Fox by including a chocolate extract as disclosed in Russoff in order to provide chocolaty flavor and aroma to the beverage (col. 9, lines 40-46). As both the concentrate of Halliday and Fox and the extract of Russoff are taught as flavorants for cocoa beverages, it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

6. Regarding claim 12, Halliday discloses enclosing the concentrate in a capsule for use in a coffee machine operated by percolation under pressure (col. 12, lines 60-65, col. 2, lines 58-67).
7. Regarding claim 13, the volume of the cartridge is typically about 30.2 mL (col. 5, lines 11-12).
8. Regarding claims 17 and 18, Russo discloses macerating the cocoa nibs in an alkaline solution pH 8.5, which is alkalized by adding alkaline agents such as sodium carbonate, potassium carbonate or sodium hydroxide.
9. Regarding claim 20, the viscosity of the concentrate is 1700-3900 mPa (Halliday, col. 12, lines 60-65).
10. Regarding claim 21, the preferred extraction temperature is 200 F (Russo, column 5, lines 73-75).
11. Regarding claim 1, Halliday, Fox and Russo discloses a method of producing a chocolate drink containing cocoa comprising the stages of inserting the capsule of claim 12 into a coffee machine operating by percolation under pressure, injecting water to solubilize the concentrate, and recovering the drink (column 13, line 50-column 14, line 26). For liquid chocolate concentrates the dilution of the concentrate is, between 2 to 1 and 10 to 1, preferably 5 to 1. Using syrup with 8% cocoa as disclosed in Fox, the resulting beverage would be expected to contain, for example, 2.6% cocoa powder at 2 to 1 dilution.
12. Regarding claims 3 and 8 the dry matter of the concentrate is 64-70% (above). Halliday discloses dilutions of the beverage concentrate in the claimed range (column 14, lines 20-26), at

10 to 200 KPa (col. 2, lines 35-45). One having ordinary skill in the art at the time of the invention would have found it obvious to adjust the temperature of the beverage to between 60 and 70 degrees Celsius in order to adjust the temperature of the chocolate beverage to one that is suitable for consumption.

Response to Arguments

13. Applicant's arguments filed 7/27/09 have been fully considered but they are not persuasive.

14. Applicant argues that would not look to Fox for the teaching of chocolate syrup comprising cocoa powder as the syrups are packaged in pressurized containers. However, it is noted that the disclosure of Fox is relied upon for providing beverage concentrate syrup, and not the manner in which it is packaged. One having ordinary skill in the art would recognize that beverage concentrate syrups can be provided for use in various containment systems, including bottles, cartridges and capsules. All other arguments have been addressed in view of the rejections as set forth above.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/
Examiner, Art Unit 1794

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1794